

Item SP05-08 Response Form

Title: Support: Notice of Activation of Military Service and Request to Modify Support (adopt forms FL-398 and FL-399)

- ☐ **Agree** with proposed changes
- ☐ **Agree** with proposed changes **if modified**
- ☐ **Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

☐ **Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

Please **write** or **fax** or **respond using the Internet** to:

Address: Ms. Romunda Price,
Judicial Council, 455 Golden Gate Avenue,
San Francisco, CA 94102
Fax: (415) 865-7664 **Attention:** Romunda Price
Internet: www.courtinfo.ca.gov/invitationstocomment

DEADLINE FOR COMMENT: 5:00 p.m., Monday, October 24, 2005
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Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Judicial Council
or the Rules and Projects Committee
All comments will become part of the public record of the council's action.*

Title	Support: Notice of Activation of Military Service and Request to Modify Support (adopt forms FL-398 and FL-399)
Summary	The proposed new mandatory forms would implement changes to the Family Code made by Senate Bill 1082 (Morrow, Stats. 2005, ch. 154), which is urgency legislation that permits military service members activated to duty to file and serve a notice of activation and request modification of support.
Source	Family and Juvenile Law Advisory Committee Hon. Mary Ann Grilli and Hon. Susan Huguenor, Co-chairs
Staff	Michael Wright, 415-865-7619, michael.wright@jud.ca.gov Ruth McCreight, 415-865-7666, ruth.mccreight@jud.ca.gov
Discussion	<p>This proposal is for forms to implement the mandate of Senate Bill 1082 (Morrow, Stats. 2005, ch. 154), which is urgency legislation requiring the Judicial Council to develop forms within 90 days of its effective date (August 30, 2005) implementing procedures for modification of support orders of military service members. SB 1082 amends several Family Code sections, including Family Code section 3651, which follows the definition in Family Code section 3650 of “support order” (as used in that chapter) as a child, family or spousal support order.</p> <p>Amended Family Code section 3651 provides that if a party to a support order is activated to military duty or National Guard service and deployed out of state, the service member may file and serve a notice of activation of military service and request modification of the support order based on the change in circumstances. The procedure appears to anticipate that the party can apply to the court or to the local child support agency. <i>Notice of Activation of Military Service and Request to Modify a Support Order</i>, form FL-398, would be the form for applying to the court, while <i>Notice of Deployment</i>, form FL-399, would be the form for applying to the local child support agency.</p> <p>Amended Family Code section 3651 specifies that the forms must include the date of deployment, whether the service member’s employer will supplement the service member’s income during deployment, and a notice to the opposing party that, absent good cause, the support order will be made retroactive to the date of service of the form or the date of deployment, whichever is later. The forms must also contain notice that the requesting party must notify the</p>

court and the opposing party upon return from military service, and must try to bring to hearing within 90 days of return any unresolved request for modification of support, or lose the right to modify under Family Code section 3651.

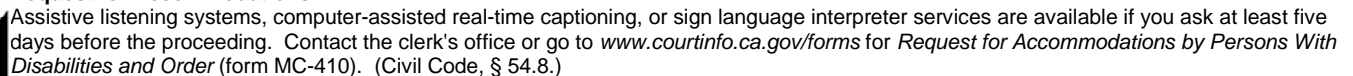
The proposed forms are attached at pages 3–7. SB 1082 can be found at page 8–13.

Attachments

- | | | | | | |
|---|-------|----------------------|-------|----------------------|------|
| a. Date: | Time: | <input type="text"/> | Dept: | <input type="text"/> | Rm.: |
| b. Address of court <input type="text"/> same as noted above <input type="text"/> other (<i>specify</i>): | | | | | |

Date: _____ JUDICIAL OFFICER

The deployed person **MUST** immediately notify the court and all parties when he or she returns from deployment. If the court was not able to hear the modification request before the deployment date, the service member **MUST** try to bring any unresolved request to a hearing within 90 days of return or lose the right to change the support order as requested here.



This case may be referred to a court commissioner for hearing. By law, court commissioners do not have the authority to issue final orders and judgments in contested cases unless they are acting as temporary judges. The court commissioner in your case will act as a temporary judge unless, *before the hearing*, you or any other party objects to the commissioner acting as a temporary judge. The court commissioner may still hear your case to make findings and a recommended order. If you do not like the recommended order, you must object to it within 10 court days; otherwise, the recommended order will become a final order of the court. If you object to the recommended order, a judge will make a temporary order and set a new hearing.

PETITIONER/PLAINTIFF:	CASE NUMBER:
RESPONDENT/DEFENDANT:	
OTHER PARENT:	

5. I am requesting the court to change the existing support order payable by
☐ petitioner/plaintiff ☐ respondent/defendant ☐ other parent to the following:
a. to a guideline support amount based on my income while deployed out of state.
b. a modified earnings assignment.
6. Service member's out-of-state deployment date (*specify date and attach a copy of the order of deployment*):
7. This request is based on:
a. ☐ petitioner's/plaintiff's ☐ respondent's/defendant's ☐ other parent's military deployment
b. ☐ the attached service member's *Notice of Deployment* (form FL-399) (*Attach this form if the local child support agency is involved or if you want the local child support agency to request that your support be modified while you are deployed.*)
c. ☐ completed *Financial Statement (Simplified)* (form FL-155) and a **blank** *Financial Statement (Simplified)* (form FL-155)
OR completed *Income and Expense Declaration* (form FL-150) and a **blank** *Income and Expense Declaration* (form FL-150)
8. I will serve a blank *Responsive Declaration to Order to Show Cause or Notice of Motion* (form FL-320) with my moving papers.
9. Check all that apply:
a. ☐ While I am deployed, my employer will supplement my military pay (*specify amount per month and attach proof*):
\$
b. ☐ While I am deployed, my employer will not supplement my military pay, and I will only have my military pay in the amount stated on my attached *Financial Statement (Simplified)* (form FL-155) or *Income and Expense Declaration* (form FL-150).
c. ☐ I do not know if my employer will supplement my military pay.
d. ☐ While I am deployed, I will have other income (*specify amount per month, source of income, and attach proof*):
\$
10. ☐ The other party and I have previously agreed that spousal support cannot be modified or terminated (*attach a copy of the agreement*).
11. ☐ **The facts in support of this request are** (*specify*):

☐ Contained in an attached declaration.

12. Number of pages attached ____.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE)

INFORMATION SHEET FOR COMPLETING AND RESPONDING TO NOTICE OF ACTIVATION OF MILITARY SERVICE AND REQUEST TO MODIFY A SUPPORT ORDER

If you are the person requesting the support order be changed:

Please follow these instructions to complete the *Notice of Activation of Military Service and Request to Modify a Support Order* if you do not have an attorney to represent you. If you have an attorney, he or she should complete this form. If you would like the local child support agency to file a request for modification while you are deployed, fill out *Notice of Deployment* (form FL-399) and submit it to the local child support agency.

When you have completed this form, file the original and attachments with the court clerk. The address of the court clerk is listed in the telephone directory under "County Government Offices." **Keep two copies of the filed *Notice of Activation of Military Service and Request to Modify a Support Order* form and its attachments. Serve one copy as well as a blank *Responsive Declaration to Order to Show Cause or Notice of Motion* (form FL-320) and blank *Income and Expense Declaration* (form FL-150) or *Financial Statement (Simplified)* (form FL-155) on the other party. If the local child support agency is involved, serve it too. Keep another copy for your records. (See *Information Sheet for Service of Process*, form FL-611, *Proof of Personal Service*, form FL-330, and *Proof of Service by Mail*, form FL-335.)**

INSTRUCTIONS FOR COMPLETING THE NOTICE OF ACTIVATION OF MILITARY SERVICE AND REQUEST TO MODIFY A SUPPORT ORDER FORM (TYPE OR PRINT FORM IN BLACK INK):

Front page, first box, top of form, left side: Print your name, address, telephone number, and fax number or e-mail address in this box if it is not already there.

Front page, second box, left side: Print your county's name and the court's address in the box. Use the same address for the court that is on your most recent support order or judgment. If you do not have a copy of your most recent support order or judgment, you can get one from either the court clerk or the local child support agency.

Front page, third box, left side: Print the names of the Petitioner/Plaintiff, Respondent/Defendant, and Other Parent in this box. Use the same names listed in your most recent support order or judgment. If no name is listed for the other parent, leave that line blank.

Front page, first box, top of form, right side: Leave this box blank for the court's use.

Front page, second box, right side: Print your case number in this box. Use the same number that is listed on your most recent support order or judgment.

Page 1, items 1 through 4:

1. Insert the name of the person(s) other than you. Include the local child support agency if they are involved in your case.
2. a. You must contact the court clerk's office to get information on obtaining a hearing date for this request. The court clerk will give you the information you need to complete this section. The hearing date must be written on the copies of the pages served on the other party.
- b. Check the first box if the address of the court where the hearing will be held is the same as the one you put at the top of the request. Check the second box if the address of the court where the hearing will be held is different from the one you put at the top of the notice. Print the different court address in the space.
- 3.-4. If you need to have the court hear your case in less than the statutorily required time, you can ask the court for an order shortening time. If you need assistance, contact the family law facilitator in your county or go to www.courtinfo.ca.gov/selfhelp/.

Page 2, items 5 through 12:

5. Check the box that correctly describes the person who is paying the support.
6. Print the date that the service member was first deployed out of state or the expected date of deployment if he or she has not yet been deployed, and attach a copy of the order of deployment.
7. a. Check the box that correctly describes the person whose military service has been activated. One box must be checked.
- b. Check the box if you want the local child support agency to request that your support be modified while you're deployed or if the local child support agency is involved in your case. Complete the *Notice of Deployment* (form FL-399) and attach it to *Notice of Activation of Military Service and Request to Modify a Support Order* (form FL-398).
- c. Fill out the *Financial Statement (Simplified)* (form FL-155), if you are allowed to use the form. See the instructions on the back side of the form to see if you qualify. If you are not allowed to use the *Financial Statement (Simplified)* (form FL-155), fill out the *Income and Expense Declaration* (form FL-150). You must attach copies of your most recent W-2 forms and paycheck stubs for the last two months to the *Financial Statement (Simplified)* (form FL-155) or *Income and Expense Declaration* (form FL-150).

8. Include a blank *Responsive Declaration to Order to Show Cause or Notice of Motion* (form FL-320) in the papers you serve on the other party.
9. Check all boxes that apply.
 - a. Check the box if the employer will supplement military pay while the person is deployed, specify monthly amount and attach proof (such as a letter from the employer).
 - b. Check the box if the employer will not supplement military pay during the deployment, and the service member will only have military pay in the amount stated on the attached *Financial Statement (Simplified)* (form FL-155) or *Income and Expense Declaration* (form FL-150).
 - c. Check the box if you do not know if your employer will supplement your military pay.
 - d. Check the box if there will be other income (such as rental income), specify the monthly amount and attach proof.
10. Check the box if you and the other party have previously agreed that spousal support cannot be modified or terminated. Attach a copy of your agreement.
11. Tell the court about any other information that supports your request. If you need additional space, you may attach pages.
12. Put the number of pages attached.

You must date the request, print your name and sign the form under penalty of perjury. When you sign the form, you are stating that the information you have provided is true and correct.

For instructions on how to complete the *Proof of Service*, see *Information Sheet for Service of Process* (form FL-611). The person who serves the request and its attachments must fill out the *Proof of Service* form. **You cannot serve your own request.**

If you are the person receiving the request that the support order be changed:

You will need to file a response and go to the hearing unless a written agreement is reached and signed by the court before the hearing.

- Complete the *Responsive Declaration to Order to Show Cause or Notice of Motion* (form FL-320). If a blank *Responsive Declaration to Order to Show Cause or Notice of Motion* (form FL-320) was not given to you when you received the *Notice of Activation of Military Service and Request to Modify a Support Order* (form FL-398), the court clerk's office, the Office of the Family Law Facilitator or the local child support agency can tell you where one can be found. Or you can get one from the California Court's Web site: www.courtinfo.ca.gov/forms/.
- Fill out the form *Financial Statement (Simplified)* (form FL-155) if you are allowed to use the form. See the instructions on the back of the form to see if you qualify; otherwise, you must fill out the form *Income and Expense Declaration* (form FL-150). You must attach copies of your most recent W-2 forms and paycheck stubs for the last two months to the *Financial Statement (Simplified)* (form FL-155) or the *Income and Expense Declaration* (form FL-150). Make at least three copies of the completed form and all attachments.

You must have one completed copy of each of the following papers served on the other party. If the local child support agency is involved, serve it to:

- Your *Responsive Declaration to Order to Show Cause or Notice of Motion* (form FL-320).
- Your *Financial Statement (Simplified)* (form FL-155) or *Income and Expense Declaration* (form FL-150).

For instructions on how to serve these papers properly, see *Information Sheet for Service of Process* (form FL-611), *Proof of Personal Service* (form FL-330) and *Proof of Service by Mail* (form FL-335). Whoever serves the papers should fill out and must sign the *Proof of Service*. **NOTICE: Consult the Office of the Family Law Facilitator or the local court rules to see if there are any other documents you will need to have served on the local child support agency and on the other party.**

The local child support agency or the family law facilitator's office may be able to provide you with a child support calculation based upon both parents' income to determine the amount of guideline support. If you agree with the proposed changes, you may be able to have one of these offices prepare an agreement to change the child support and have it signed by both parents and the court. If you are able to reach an agreement with the other party and the agreement is signed by the court before the hearing, you do not need to appear at the hearing.

NOTICE: Unless you know the hearing has been taken off calendar, you should go to the hearing as scheduled to protect your rights. You might consider calling the court the day before the hearing to see if the hearing is still on the calendar.

If you need additional assistance with this form, contact an attorney or the court's family law facilitator.

PETITIONER/PLAINTIFF:	CASE NUMBER:
RESPONDENT/DEFENDANT:	
OTHER PARENT:	

NOTICE OF DEPLOYMENT

Attachment to *Notice of Activation of Military Service and Request to Modify Support Order* (form FL-398)

Notice: Use this form if you are requesting the services of the local child support agency or if you already have an open case in the local child support agency.

1. a. Service Member's Name:
- b. Mailing address:
- c. Employer (*name and address*):

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- d. Date of deployment (*attach a copy of the order of deployment*):

2. Check all that apply:

- a. ☐ While I am deployed, my employer will supplement my military pay (*specify amount per month and attach proof*):
\$
- b. ☐ While I am deployed, my employer will not supplement my military pay, and I will only have my military pay in the amount stated on my attached *Financial Statement (Simplified)* (form FL-155) or *Income and Expense Declaration* (form FL-150).
- c. ☐ I do not know if my employer will supplement my military pay.
- d. ☐ While I am deployed, I will have other income (*specify amount per month, source of income, and attach proof*):
\$

3. ☐ The other party and I have previously agreed that spousal support cannot be modified or terminated (*attach a copy of the agreement*).
4. I have attached a completed *Financial Statement (Simplified)* (form FL-155) or *Income and Expense Declaration* (form FL-150) and copies of my paycheck stubs for the last 2 months and my most recent W-2 forms.
5. I request the local child support agency to seek a modification of my support during the period of my deployment.
6. I will immediately notify the local child support agency and the other party upon my return.

NOTICE

If a modification is ordered, the new court order will become effective on the date this form was served on the opposing party or the date of deployment, whichever is later, unless the court determines there is good cause to do otherwise.

The deployed person **MUST** immediately notify the court and all parties when he or she returns from deployment. If the court was not able to hear the modification request before the deployment date, the service member **MUST** try to bring any unresolved request to a hearing within 90 days of return or lose the right to change the support order as requested here.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)



(SIGNATURE)

BILL NUMBER: SB 1082 CHAPTERED
BILL TEXT

CHAPTER 154

FILED WITH SECRETARY OF STATE AUGUST 30, 2005

APPROVED BY GOVERNOR AUGUST 30, 2005

PASSED THE ASSEMBLY AUGUST 18, 2005

PASSED THE SENATE JUNE 1, 2005

AMENDED IN SENATE MAY 10, 2005

AMENDED IN SENATE MAY 3, 2005

AMENDED IN SENATE APRIL 25, 2005

AMENDED IN SENATE APRIL 13, 2005

INTRODUCED BY Senators Morrow and Ducheny

(Principal coauthor: Senator Ashburn)

(Coauthors: Senators Cox, Denham, Dunn, Dutton, Machado, Soto, and Speier)

(Coauthors: Assembly Members Cogdill, DeVore, Haynes, Shirley Horton, Houston, Huff, La Malfa, La Suer, Leslie, Maze, Mountjoy, Niello, Oropeza, Parra, Plescia, Sharon Runner, Ruskin, Umberg, and Wyland)

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 3047 is added to the Family Code, to read:

3047. A party's absence, relocation, or failure to comply with custody and visitation orders shall not, by itself, be sufficient to justify a modification of a custody or visitation order if the reason for the absence, relocation, or failure to comply is the party's activation to military service and deployment out of state.

SEC. 2. Section 3651 of the Family Code is amended to read:

3651. (a) Except as provided in subdivisions (c) and (d) and subject to Article 3 (commencing with Section 3680) and Sections 3552, 3587, and 4004, a support order may be modified or terminated at any time as the court determines to be necessary.

(b) Upon the filing of a supplemental complaint pursuant to Section 2330.1, a child support order in the original proceeding may be modified in conformity with the statewide uniform guideline for child support to provide for the support of all of the children of the same parents who were named in the initial and supplemental pleadings, to consolidate arrearages and wage assignments for children of the parties, and to consolidate orders for support.

(c) (1) Except as provided in paragraph (2) and subdivision (b), a support order may not be modified or terminated as to an amount that accrued before the date of the filing of the notice of motion or order to show cause to modify or terminate.

(2) If a party to a support order is activated to United States military duty or National Guard service and deployed out of state, the service member may file and serve a notice of activation of military service and request to modify a support order, in lieu of a notice of motion or order to show cause, by informing the court and the other party of the request to modify the support order based on the change in circumstance. The service member shall indicate the date of deployment, and if possible, the court shall schedule the hearing prior to that date. If the court cannot hear the matter prior

to the date of deployment out of state, and the service member complies with the conditions set forth in the Servicemembers Civil Relief Act, Section 522 of the Appendix of Title 50 of the United States Code, the court shall grant a stay of proceedings consistent with the timelines for stays set forth in that section. If, after granting the mandatory stay required by Section 522 of the Appendix of Title 50 of the United States Code, the court fails to grant the discretionary stay described under the law, it shall comply with the federal mandate to appoint counsel to represent the interests of the deployed service member. The court may not proceed with the matter if it does not appoint counsel, unless the service member is represented by other counsel. If the court stays the proceeding until after the return of the service member, the service member shall request the court to set the matter for hearing within 90 days of return from deployment or the matter shall be taken off calendar and the existing order may not be made retroactive pursuant to subdivision (c) of Section 3653.

(3) A service member who does not file a notice of activation of military service and request to modify a support order or order to show cause or notice of motion prior to deployment out of state nonetheless shall not be subject to penalties otherwise authorized by Chapter 5 (commencing with Section 4720) of Part 5 on the amount of child support that would not have accrued if the order had been modified pursuant to paragraph (2), absent a finding by the court of good cause. Any such finding shall be stated on the record.

(4) Notwithstanding any other provision of law, no interest shall accrue on that amount of a child support obligation that would not have become due and owing if the activated service member modified his or her support order upon activation to reflect the change in income due to the activation. Upon a finding by the court that good cause did not exist for the service member's failure to seek, or delay in seeking, the modification, interest shall accrue as otherwise allowed by law.

(d) An order for spousal support may not be modified or terminated to the extent that a written agreement, or, if there is no written agreement, an oral agreement entered into in open court between the parties, specifically provides that the spousal support is not subject to modification or termination.

(e) This section applies whether or not the support order is based upon an agreement between the parties.

(f) This section is effective only with respect to a property settlement agreement entered into on or after January 1, 1970, and does not affect an agreement entered into before January 1, 1970, as to which Chapter 1308 of the Statutes of 1967 shall apply.

(g) (1) The Judicial Council, no later than 90 days after the effective date of the act adding this section, shall develop any forms and procedures necessary to implement paragraph (2) of subdivision (c). The Judicial Council shall ensure that all forms adopted pursuant to this section are in plain language.

(2) The form developed by the Judicial Council, in addition to other items the Judicial Council determines to be necessary or appropriate, shall include the following:

(A) The date of deployment and all information relevant to the determination of the amount of child support, including whether the service member's employer will supplement the service member's income during the deployment.

(B) A notice informing the opposing party that, absent a finding

of good cause, the order will be made retroactive to the date of service of the form or the date of deployment, whichever is later.

(C) Notice that the requesting party must notify the court and the other party upon return from military duty and seek to bring any unresolved request for modification to hearing within 90 days of return, or else lose the right to modify the order pursuant to this section.

SEC. 3. Section 3653 of the Family Code is amended to read:

3653. (a) An order modifying or terminating a support order may be made retroactive to the date of the filing of the notice of motion or order to show cause to modify or terminate, or to any subsequent date, except as provided in subdivision (b) or by federal law (42 U.S.C. Sec. 666(a)(9)).

(b) If an order modifying or terminating a support order is entered due to the unemployment of either the support obligor or the support obligee, the order shall be made retroactive to the later of the date of the service on the opposing party of the notice of motion or order to show cause to modify or terminate or the date of unemployment, subject to the notice requirements of federal law (42 U.S.C. Sec. 666(a)(9)), unless the court finds good cause not to make the order retroactive and states its reasons on the record.

(c) If an order modifying or terminating a support order is entered due to a change in income resulting from the activation to United States military service or National Guard duty and deployment out of state for either the support obligor or the support obligee, the order shall be made retroactive to the later of the date of the service on the opposing party of the notice of activation, notice of motion, order to show cause to modify or terminate, or the date of activation, subject to the notice requirements of federal law (42 U.S.C. Sec. 666(a)(9)), unless the court finds good cause not to make the order retroactive and states its reasons on the record. Good cause shall include, but not be limited to, a finding by the court that the delay in seeking the modification was not reasonable under the circumstances faced by the service member.

(d) If an order decreasing or terminating a support order is entered retroactively pursuant to this section, the support obligor may be entitled to, and the support obligee may be ordered to repay, according to the terms specified in the order, any amounts previously paid by the support obligor pursuant to the prior order that are in excess of the amounts due pursuant to the retroactive order. The court may order that the repayment by the support obligee shall be made over any period of time and in any manner, including, but not limited to, by an offset against future support payments or wage assignment, as the court deems just and reasonable. In determining whether to order a repayment, and in establishing the terms of repayment, the court shall consider all of the following factors:

(1) The amount to be repaid.

(2) The duration of the support order prior to modification or termination.

(3) The financial impact on the support obligee of any particular method of repayment such as an offset against future support payments or wage assignment.

(4) Any other facts or circumstances that the court deems relevant.

SEC. 4. Section 17440 is added to the Family Code, to read:

17440. (a) The Department of Child Support Services shall work with all branches of the United States military and the National

Guard to ensure that information is made available regarding the rights and abilities of activated service members to have their support orders modified based on a change in income resulting from their activation, or other change of circumstance affecting the child support calculation, or to have a portion of their child support arrearages compromised pursuant to Section 17560.

(b) No later than 90 days after the effective date of this section, the department shall develop a form for completion by the service member that will allow the local child support agency to proceed with a motion for modification without the service member being required to appear. The form shall contain only the information necessary for the local child support agency to proceed with the motion.

(c) Within five business days of receipt of a properly completed form, the local child support agency shall bring a motion to modify the support order. The local child support agency shall bring the motion if the change in circumstances would result in any change in the dollar amount of the support order.

(d) The department shall work with the United States military to have this form and the form developed pursuant to Section 3651 distributed at all mobilization stations or other appropriate locations to ensure timely notification to all activated personnel of their rights and responsibilities.

SEC. 5. Section 17560 of the Family Code is amended to read:

17560. (a) The department shall create a program establishing an arrears collection enhancement process pursuant to which the department may accept offers in compromise of child support arrears and interest accrued thereon owed to the state for reimbursement of aid paid pursuant to Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code. The program shall operate uniformly across California and shall take into consideration the needs of the children subject to the child support order and the obligor's ability to pay.

(b) If the obligor owes current child support, the offer in compromise shall require the obligor to be in compliance with the current support order for a set period of time before any arrears and interest accrued thereon may be compromised.

(c) Absent a finding of good cause, any offer in compromise entered into pursuant to this section shall be rescinded, all compromised liabilities shall be reestablished notwithstanding any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise may be refunded, if either of the following occurs:

(1) The department or local child support agency determines that the obligor did any of the following acts regarding the offer in compromise:

(A) Concealed from the department or local child support agency any income, assets, or other property belonging to the obligor or any reasonably anticipated receipt of income, assets, or other property.

(B) Intentionally received, withheld, destroyed, mutilated, or falsified any information, document, or record, or intentionally made any false statement, relating to the financial conditions of the obligor.

(2) The obligor fails to comply with any of the terms and conditions of the offer in compromise.

(d) Pursuant to subdivision (k) of Section 17406, in no event may

the administrator, director, or director's designee within the department, accept an offer in compromise of any child support arrears owed directly to the custodial party unless that party consents to the offer in compromise in writing and participates in the agreement. Prior to giving consent, the custodial party shall be provided with a clear written explanation of the rights with respect to child support arrears owed to the custodial party and the compromise thereof.

(e) Subject to the requirements of this section, the director may delegate to the administrator of a local child support agency the authority to compromise an amount of child support arrears that does not exceed five thousand dollars (\$5,000). Only the director or his or her designee may compromise child support arrears in excess of five thousand dollars (\$5,000).

(f) For an amount to be compromised under this section, the following conditions shall exist:

(1) (A) The administrator, director or director's designee within the department determines that acceptance of an offer in compromise is in the best interest of the state and that the compromise amount equals or exceeds what the state can expect to collect for reimbursement of aid paid pursuant to Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code in the absence of the compromise, based on the obligor's ability to pay.

(B) Acceptance of an offer in compromise shall be deemed to be in the best interest of the state, absent a finding of good cause to the contrary, with regard to arrears that accrued as a result of a decrease in income when an obligor was a reservist or member of the National Guard, was activated to United States military service, and failed to modify the support order to reflect the reduction in income. Good cause to find that the compromise is not in the best interest of the state shall include circumstances in which the service member's failure to seek, or delay in seeking, the modification were not reasonable under the circumstances faced by the service member. The director, no later than 90 days after the effective date of the act adding this subparagraph, shall establish rules that compromise, at a minimum, the amount of support that would not have accrued had the order been modified to reflect the reduced income earned during the period of active military service.

(2) Any other terms and conditions that the director establishes that may include, but may not be limited to, paying current support in a timely manner, making lump sum payments, and paying arrears in exchange for compromise of interest owed.

(3) The obligor shall provide evidence of income and assets, including, but not limited to, wage stubs, tax returns, and bank statements and establish all of the following:

(A) That the amount set forth in the offer in compromise of arrears owed is the most that can be expected to be paid or collected from the obligor's present assets or income.

(B) That the obligor does not have reasonable prospects of acquiring increased income or assets that would enable the obligor to satisfy a greater amount of the child support arrears than the amount offered, within a reasonable period of time.

(C) That the obligor has not withheld payment of child support in anticipation of the offers in compromise program.

(g) A determination by the administrator, director or the director's designee within the department that it would not be in the best

interest of the state to accept an offer in compromise in satisfaction of child support arrears shall be final and not subject to the provisions of Chapter 5 (commencing with Section 17800) of Division 17, or subject to judicial review.

(h) Any offer in compromise entered into pursuant to this section shall be filed with the appropriate court. The local child support agency shall notify the court if the compromise is rescinded pursuant to subdivision (c).

(i) Any compromise of child support arrears pursuant to this section shall maximize to the greatest extent possible the state's share of the federal performance incentives paid pursuant to the Child Support Performance and Incentive Act of 1998 and shall comply with federal law.

(j) The department shall ensure uniform application of this section across the state.

(k) The department shall consult with the Franchise Tax Board in the development of the program established pursuant to this section.

(l) The department shall report to the Legislature on the results of the program established pursuant to this section no later than June 30, 2006.

(m) This section shall remain in effect only until January 1, 2007, and as of that date is repealed unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

SEC. 6. The amendments to Section 17560 of the Family Code made by this act shall apply to all service members deployed out of state, regardless of whether that deployment occurred before or after the effective date of this act.

SEC. 7. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that the parental rights of soldiers and sailors who return from active duty service in Iraq and Afghanistan on or before December 31, 2005, are protected to the same extent as those of soldiers and sailors who return after that date, it is necessary that this act take effect immediately.